

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Joseph Anthony Favors,
Plaintiff,

v.

Michelle Hoover, et al,
Defendants.

Civil No. 13cv428 (JRT/LIB)

REPORT AND RECOMMENDATION

Joseph Anthony Favors, *pro se*.

Andrea G. White, Assistant County Attorney, for Defendants Boreland and Mehl.

Leo I. Brisbois, United States Magistrate Judge.

This matter is before the undersigned United States Magistrate Judge on Plaintiff Joseph Anthony Favors' ("Favors") Motion for Default Judgment [Doc. No. 143] against Defendants Mark Mehl and Christopher Boreland ("Mehl" and "Boreland"). The case has been referred to this Court for a Report and Recommendation pursuant to 28 U.S.C. § 636 and Local Rule 72.1. For the reasons discussed below, the Court recommends that Favors' motion for default judgment be denied.

I. BACKGROUND

Favors is civilly committed as a "sexually dangerous person" and "sexual psychopathic personality" at the Minnesota Sex Offender Program in Moose Lake, Minnesota ("MSOP"). (Compl. ¶¶ 21, 198). On February 21, 2013, Favors brought a complaint arising out of his parole revocation and imprisonment for stalking Defendant Michelle Hoover at MSOP. (See generally Compl.) [Doc. No. 1]. Favors contends Mehl and Boreland failed to plead or otherwise defend within the appropriate time after

service of the summons by the United States Marshals. (Mot. for Default Judgment at 2 [Doc. No. 143] and Mem. Supp. Mot. for Default Judgment [Doc. No. 144] at 2).

Boreland and Mehl oppose the motion. (Defs' Boreland and Mehl's Mem. in Opp. to Mot. for Default) [Doc. No. 168]. They contend their response to the summons and complaint on November 15, 2013, in compliance with this Court's order on October 25, 2013, was timely.

II. DISCUSSION

Federal Rule of Civil Procedure 55 provides:

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.

On October 25, 2013, this Court ordered Mehl and Boreland to serve an answer or other responsive pleading on Favors no later than November 15, 2013. (Order) [Doc. No. 101]. Favors filed his motion for default judgment on November 14, 2013, and Mehl and Boreland served and filed their motion to dismiss on November 15, 2013. [Doc. No. 132] The response was timely, therefore, Favors' motion should be denied.

III. CONCLUSION

Based on the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED** that Favors' motion for default judgment [Doc. No. 143] be DENIED.

Dated this 13th day of May, 2014.

s/Leo I. Brisbois

LEO I. BRISBOIS

United States Magistrate Judge

NOTICE

Pursuant to Local Rule 72.2(b), any party may object to this Report and Recommendation by filing with the Clerk of Court, and serving all parties by **May 27, 2014**, a writing that specifically identifies the portions of the Report to which objections are made and the bases for each objection. A party may respond to the objections within fourteen days of service thereof. Written submissions by any party shall comply with the applicable word limitations provided for in the Local Rules. Failure to comply with this procedure may operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals. This Report and Recommendation does not constitute an order or judgment from the District Court, and it is therefore not directly appealable to the Court of Appeals.